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The Honorable Mark E. Souder, Chairman
Subcommittee on Criminal Justice, Drug Policy and Human Resources
Congress of the United States
2157 Rayburn House Office Building
Washington, D.C. 21515 – 6143

**CONGRESSIONAL FIELD HEARING – WITNESS INTIMIDATION
May 2, 2005**

Good morning Chairmen: Congressman Souder, Congressman Cummings, distinguished members of this Committee, fellow elected officials, invited guests and citizens:

I am Patricia Coates Jessamy, Baltimore City State's Attorney, and have served the citizens of Baltimore as chief prosecutor for the last 10 years, following 10 years as a prosecutor and deputy prosecutor in the Baltimore State's Attorney's Office.

I would like to begin by thanking my Congressman, Elijah Cummings, Congressman Souder, and the distinguished members of this Committee for calling this important hearing and for raising awareness of this vital public safety issue. I commend Congressman Cummings for introducing the Witness Security and Protection Act of 2005 (H.R. 908) to provide dedicated federal funds for local witness protection programs. This funding is urgently needed to streamline 24-independently operated victim assistance programs directed by local prosecutors. A uniform state directed victim protection program operated by law enforcement to deliver protection services to crime victims is needed.

Last week I met with Congressman Cummings to discuss how the federal government could help states by delivering needed funding for improved and expanded local programs. I wholeheartedly support House Resolution 908 and will work with Congressman Cummings to secure passage of this important legislation.

Baltimore is in the midst of the worst public safety crisis that I have seen in my years as State's Attorney. Our criminal justice system is threatened by a "Conspiracy of Silence", a documented escalation of witness threats, intimidation and conspiracy carried out by individuals

who seek to harm and silence witnesses who are summonsed or interviewed by police and prosecutors to testify in violence cases in Baltimore.

These chilling and increasingly brazen incidents are growing in number. Two new stories of witness intimidation emerged just last week. I learned from a District Court prosecutor that the victim of an assault was so terrified of being identified and recognized in court that he came to court in a disguise after threats and intimidation. This victim witnessed drug activity in his neighborhood and reported this to the police. The defendant told the victim, in front of the police, "The police won't be here forever, when they leave, you're dead." This defendant was charged with second-degree assault and eventually pled guilty and was sentenced to six-months in jail.

On Wednesday last week, a witness who was threatened multiple times by the victim and defendant in a shooting, was so reluctant to testify that our witness locator unit was called to serve a body attachment to detain him in jail because of his previous failure to appear when summonsed by the court. This witness was in court on the witness stand and suddenly identified two men on a court bench who had come to the jail to warn him not to testify. They were ordered arrested by the Judge in the open courtroom during court proceedings. All of this after the witness, who has no criminal history, received a death threat from the victim and defendant during his prison bus ride to court, as he was about to testify because he too was held in jail on a body attachment. The witness was courageous and testified that he observed the defendant shoot the victim, however the shooting victim changed his testimony and pointed to the defendant saying, "This is not the man who shot me." Last Wednesday the defendant was acquitted of all charges and is a free man on the streets of Baltimore today. The witness has been relocated.

Over the past several years, prosecutors have witnessed more and more deliberate attempts to thwart our ability to successfully prosecute defendants involved in violence cases. These violent, repeat offenders escape successful prosecution by silencing witnesses in criminal cases. When the court dismisses cases, violent repeat offenders return to our communities. Statistics compiled by the State's Attorney's Office reveal that about one-third of all non-fatal shooting cases in Baltimore are dismissed because of witness issues, and homicide prosecutors report that in almost every homicide prosecution some form of intimidation occurs.

For example:

Just two years ago, our community witnessed the execution of Baltimore Police Detective Thomas Newman, killed because he had testified as a witness to a non-fatal shooting months earlier. Yes, witnesses are murdered. We know of at least seven cases where a witness was shot or murdered since September of last year.

And there is the Dawson family tragedy. Their home was firebombed because drug dealing was reported to police.

These are examples of the ultimate intimidation, and led to a tragic loss of life, but intimidation comes in many forms –

- A Molotov cocktail thrown at the home or into the window.
- Masked gunmen in a child's bedroom at 5 in the morning with a warning, delivered at gunpoint to the child's head, "make sure HE DOES NOT TESTIFY"...

Sometimes, the intimidation more subtle:

- A threatening glance, stare or gesture towards a witness outside or even inside the courtroom
- The use of text messaging by individuals seated in the back of the courtroom during a witness' testimony
- Strange visitors to your home who threaten with ominous warnings if you, your child, or other loved ones testify.

Whatever form it takes, witness intimidation is having its desired effect, silencing witnesses.

- A prosecutor with a case pending in March just had a witness threatened and stabbed.

This terrorism must end. Our witnesses must be protected from this growing street vigilantism. Today, the escalating use of threats and intimidation to silence witnesses in city criminal cases, in courtrooms across Maryland, and in urban cities in our nation, threatens to bring justice to a standstill.

In the late 80's, the proliferation of a new drug of choice, cocaine, coaxed by a steady heroin market on Baltimore street corners, combined with an arsenal of illegal guns and created a surge in loosely knit violent drug trafficking organizations that used gun violence to administer street justice. Today, this violence continues to have a deadly grip on Baltimore, with a corresponding increase in street justice and witness intimidation.

By 1995, law enforcement was scrambling to keep up with a steady rise in homicides and non-fatal shootings. Prosecutors in Baltimore were jolted by the street execution of a witness in a federal drug conspiracy trial. State's Attorney Stuart Simms directed me, as his deputy, to create a witness security program that would reach out to witnesses who felt threatened or

intimidated. Since then, prosecutors continue to note case after case lost to intimidation, as frightened citizens and communities believe that law enforcement is powerless to protect them against vigilante justice.

The increased levels of intimidation I have described are not unique to Baltimore. Recently, Philadelphia, Boston and other urban cities across the country are reporting increased incidents of witness intimidation. Last week, I met with my colleagues in the National District Attorney's Association (NDAA), including Daniel F. Conley, District Attorney in Boston, and there was strong consensus that witness intimidation is a national issue that must be addressed by local, state and federal law enforcement officials and that a new level of partnership must be forged to address this public safety crisis.

Over the past several years, in my meetings with violence prosecutors, I outlined two important steps needed to address this increased level of threats and intimidation that affected the successful prosecution of homicides and shootings in our criminal justice system in Baltimore.

Prosecutors agreed there were two urgent needs:

1. Changing the state law and maximum penalty for witness intimidation and urging state lawmakers to provide the same legal tools available to federal prosecutors.
2. The need to locate and pursue missing witnesses to bring them to court to allow cases to be successfully prosecuted.

I would like to thank Governor Robert L. Ehrlich Jr. and Lt. Governor Michael S. Steele, here with us today, for their support and work with me on House Bill 248 to change state law. More legislative work on this issue is needed next year. While the final bill with the amendment did not provide the equivalent of the federal hearsay rule that we need as prosecutors, it does provide increased penalties for certain crimes of violence and felony drug cases and adds conspiracy as crime.

I would also like to thank our law enforcement partners, the Baltimore City Police Department, for providing five detectives to the State's Attorney's Office to form a witness locator unit that works full-time to locate missing witnesses and bring them to court.

In addition to these important steps, there is a need to bolster local witness protection programs that extend assistance to frightened victims and witnesses. I believe that Maryland and other states must look to the federal government as a resource and training ground to build more sophisticated program options — such as offering 24-hour police protection or opportunities such as safe houses and inter-state relocation. State's Attorneys in Maryland agree that current statewide victim protection programs can do little more than offer relocation assistance without an infusion of resources and funding that would increase law enforcement protection offered by sworn officers.

I am frequently asked, "Would this help?" I endorse the need for more resources to fund victim protection programs similar to what is offered at the federal level, and I believe that training and partnerships between law enforcement agencies must be cultivated. However, I am cautiously optimistic, knowing that half of the victims or witnesses in Baltimore offered relocation assistance decline to follow-up with our caseworkers for assistance.

Since July 2004, prosecutors have referred 206 victims and witnesses to our witness assistance program – 111 were formally interviewed. 95 individuals were contacted for formal interviews and did not show up for their appointment, and did not return phone calls and made no follow-up contact after our initial call. Of these referrals, 46 individuals entered into temporary safe housing.

As the state legislative session ended several weeks ago, I spoke with several state lawmakers in Annapolis who agreed that following our work on an improved statute this year, more work must also be done to address the level of protection programs offered by the State.

I urge the development and implementation of a state program for victim protection. This program should be developed and administered by a consortium of local, state and federal law enforcement authorities. The federal marshals have a wealth of expertise and experience that could be shared with our city and state law enforcement agencies to develop more comparable programming.

These programs are known to be expensive and the development of new programs would require obvious an expenditure when federal resources are scarce. I urge the Justice Department and Congress to carefully review the testimony from today's hearing and review the immediate need for grant programs to re-direct grant dollars towards this urgent need.

Each year, the City of Baltimore allocates \$300,000 toward the State's Attorney's Witness Assistance program. As of April 27, we have spent over \$281,000 in witness assistance funds. In addition the Maryland State's Attorney's Association provides funding from a reimbursable state victim witness protection and relocation fund and thus far this year has provided \$35,000 to assist with victim/witness relocation.

This includes:

- More than \$219,000 for temporary housing
- More than \$53,000 for security deposits and rent to arrange permanent relocation
- More than \$13,000 for detoxification and rehabilitation for states witnesses
- More than \$36,000 in storage and moving expenses

Despite these expenses, there continues to be a need regarding the federal housing program guidelines such as Section 8. Congress could authorize an exemption for witnesses and victims when there is an urgent and immediate need for housing assistance as a result of intimidation. More could be done to relocate families within federal housing programs across

the country through a reciprocal housing arrangement between the state housing offices. While we have begun to move families within counties in Maryland, we are still unable to move families who are receiving federal housing subsidies to other states. Federal housing is a tremendous resource and we need a mechanism so that this resource could be tapped at the local level.

In closing, we must seize the many opportunities, insights, and recommendations learned and presented at today's congressional hearing to look more closely at how this issue affects public safety in our community, and how we can work together as local, state and federal law enforcement partners to make a difference.

On behalf of citizens, I would like to again extend my appreciation to both Congressmen Mark Souder and Elijah Cummings for their interest in this vital issue of public safety.

Sincerely,

Patricia C. Jessamy
State's Attorney